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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Siskiyou)

THE PEOPLE,

Plaintiff and Respondent,

v.

EDWARD LEE SANDERSON, SR.,

Defendant and Appellant.

C086303

(Super. Ct. No. SCCRCRBF20161689)

Defendant Edward Lee Sanderson, Sr., pleaded no contest to criminal threats (Pen. Code, § 422)¹ and admitted a strike allegation (§§ 1170.12, subds. (a)-(d), 667, subds. (b)-(i)). Sentencing defendant on this and two unrelated cases, the trial court imposed an eight-year state prison term. (In a subsequent proceeding, the trial court ordered defendant to pay \$12,911.36 in victim restitution for the cost of a security system.)

On appeal, defendant contends the restitution award was unauthorized because he was not convicted of a violent felony. Since the victim restitution was for the purchase of a security system for a place of business rather than a residence, defendant's claim is without merit. In addition, relying on a recent decision from this court, we conclude

¹ Undesignated statutory references are to the Penal Code.

conviction of a violent felony is not a prerequisite to victim restitution for the cost of a security system. We affirm the restitution order.

BACKGROUND

The facts of defendant's crime are taken from the preliminary hearing.

On July 6, 2016, law enforcement officers responded to a call from E.H., the executive director of the Karuk Tribe Housing Authority, regarding threatening conduct. She was shaken up and frightened; she had received a threatening phone message from defendant, a tribal member who was angry about a housing issue. Defendant left a message that stated, "[a]nybody who fucks with Ed pays the price. I will take a life over this," and "I'm the one who set you mother fuckers up, now get this done or I will get ahold of my families down there and we're going to raise some wholly Hell and we're going to plant some fucking people." Defendant also talked about "Dr. Rock" and being a medicine man, which sounded like "crazy talk" to her.

E.H. feared defendant would carry out his threats and kill her and her fellow employees. She was worried because they were not armed and there was not much of a barrier between the staff and the public at the workplace. She notified the tribal officer about defendant's threat and increased security.

Contacted by law enforcement authorities, defendant initially denied making the statement but later said he was ashamed.

On July 22, 2016, defendant entered the Karuk housing office and asked for food assistance. He raised up his arm, pointing it like a long gun at an employee and mentioning .30-30 or .30-06 shells. A security officer at the scene knew defendant had a criminal past and was afraid he would get a gun and shoot them. E.H. directed security officers to contact the police, which they did.

The Karuk Tribe spent \$18,000 on camera and surveillance equipment in response to defendant's threats.

The Karuk Tribe submitted a request for \$12,911.36 in restitution for the cost of the new security system it installed in response to defendant's criminal threats. The trial court ordered victim restitution in the amount of \$12,911.36.

DISCUSSION

Defendant's claim is narrow. He does not contend the restitution order was not supported by substantial evidence or was not related to his criminal conduct. His sole contention is that restitution for a security system is, pursuant to section 1202.4, subdivision (f)(3)(J), authorized only when a defendant is convicted of a violent felony. Since he was not convicted of a violent felony, defendant concludes the restitution award was unauthorized.

Crime victims have a right to restitution for losses caused by criminal activity. (Cal. Const., art. I, § 28, subd. (b); see *People v. Giordano* (2007) 42 Cal.4th 644, 652.) Subject to certain exceptions not relevant to this case, "in every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court." (§ 1202.4, subd. (f).)

Defendant's claim centers on subdivision (f)(3) of section 1202.4 (subdivision (f)(3)(J)) that states in pertinent part:

"To the extent possible, the restitution order . . . shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct, including, but not limited to, all of the following: [¶] . . . [¶] "(J) Expenses to install or increase residential security incurred related to . . . a violent felony, as defined in subdivision (c) of Section 667.5, including, but not limited to, a home security device or system, or replacing or increasing the number of locks."

According to defendant, this precludes restitution for security a system unless it is related to a violent felony. Not so.

Subdivision (f)(3)(J) applies only to residential security systems. Here, the restitution ordered was for a security system installed by the Karuk Tribe Housing Authority in response to the criminal threats defendant made to its employees. Since this was not a security system installed at or intended for a residence, but instead at a place of business, the language of subdivision (f)(3)(J) does not govern here.

Defendant would not prevail even if we were to extend subdivision (f)(3)(J) to include restitution for security systems other than residential ones. A panel of this court rejected the defendant's contention in *People v. Henderson* (2018) 20 Cal.App.5th 467, review granted May 23, 2018 and review dismissed December 12, 2018, S247716 (*Henderson*),² where we held:

“The plain language of . . . subdivision (f)(3)(J) requires that where a defendant is convicted of a violent felony, the trial court shall include in the restitution award expenses reasonably incurred by a victim in installing a residential security system. (§ 1202.4, subd. (f)(3)(J).) The statute does not purport to *preclude* restitution for such installation under other circumstances; in fact, it says nothing about any restriction on restitution whatsoever. Where the mandatory language does not apply—as in this case, because defendant's crime[] of conviction w[as] not classified by the relevant statute as a violent felon[y]—the direction to the trial court remains as set forth in the introductory language of . . . subdivision (f)(3), *ante*, that is, to include in its restitution order ‘every determined economic loss incurred as the result of the defendant's criminal conduct, *including, but not limited to*, all of the following . . .’ (Italics added.) [¶] As we have previously held, ‘[b]ecause the statute uses the language “including, but not limited to”

² We cite *Henderson* for persuasive purposes only. (Cal. Rules Court, rule 8.1115(e)(1).)

these enumerated losses, a trial court may compensate a victim for any economic loss which is proved to be the direct result of the defendant's criminal behavior, even if not specifically enumerated in the statute.' [Citation.] Thus, where a victim incurs the economic loss of installing a security system as a direct result of a defendant's conduct, the trial court may include that amount in a victim restitution award regardless of the crime of conviction." (*Henderson, supra*, 20 Cal.App.5th at pp. 471-472.)

Defendant asks us to reconsider *Henderson* and instead adopt the approach taken in *People v. Salas* (2017) 9 Cal.App.5th 736 (*Salas*). The defendant in *Salas* was convicted of a domestic violence offense that was not a violent felony, but the trial court awarded victim restitution for a home security system pursuant subdivision (f)(3)(J) because the defendant inflicted great bodily injury on the victim. (*Salas*, at p. 740.) The Court of Appeal held, "the trial court erred by treating Salas's offense as a violent felony for purposes of awarding restitution." (*Id.* at p. 741.) We distinguished *Salas* in *Henderson* because the trial court in *Henderson* did not erroneously rely on subdivision (f)(3)(J) when awarding restitution for a residential security system: "the trial court here did not erroneously classify defendant's crimes of conviction as violent felonies under section 1202.4, subdivision (f)(3)(J). Instead, the trial court concluded, albeit implicitly, that section 1202.4, subdivision (f)(3)(J) did not *preclude* it from ordering restitution in cases *not* involving violent felonies by opining that it maintained the discretion to order restitution for the alarm system (and subsequently ordering the disputed restitution)." (*Henderson, supra*, 20 Cal.App.5th at p. 472.)

The *Salas* court also found, "[t]he statute's plain language and legislative history," and certain canons of statutory construction supported the holding that "residential security expenses are recoverable under section 1202.4(f)(3)(J) only when they are 'incurred related to a violent felony, as defined in section 667.5, subdivision (c).'" (*Salas, supra*, 9 Cal.App.5th at p. 744.) We concluded in *Henderson* that "[w]e do not disagree that *under . . . subdivision (f)(3)(J)* restitution is only mandated where the

expenses are related to violent felonies. Here, there is no dispute that defendant's offenses do not qualify as violent felonies, thus the restitution order here would *not* properly fall under subdivision (f)(3)(J). In that regard, this case is distinguishable from *Salas*. *Salas* does not decide whether the restitution order was permissible as an exercise of the trial court's discretion under the broader language of that portion of subdivision (f)(3) quoted *ante*." (*Henderson, supra*, 20 Cal.App.5th at pp. 472-473, fn. omitted.) We also rejected the broader reading of *Salas* that defendant advocates for here. (See *Henderson* at p. 473, fn. 3.)

We see no reason to depart from our holding in *Henderson, supra*, 20 Cal.App.5th 467.³ Since the restitution order was not for a residential security system, and, since it was not awarded pursuant to subdivision (f)(3)(J), we conclude the victim restitution order is authorized and proper.

DISPOSITION

The restitution order is affirmed.

_____/s/_____, J.
HOCH

We concur:

_____/s/_____
MURRAY, Acting P. J.

_____/s/_____
DUARTE, J.

³ We are not alone on this point. (See *People v. Brooks* (2018) 23 Cal.App.5th 932, 946, review granted Aug. 29, 2018; review dismissed Dec. 12, 2018, S249617 [adopting *Henderson* approach and rejecting *Salas*].)